BOSTON RENT EQUITY BOARD

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REGULATION 10 VACANCY DECONTROL

SECTION 1. GENERAL RULES

Except as provided in Section 3, a housing accommodation which becomes vacant on or after January 1, 1976, shall become decontrolled from rent and eviction controls, if the legal occupant vacated voluntarily or pursuant to court order and if the requirements of this regulation are met.

SECTION 2. DEFINITIONS

When used in this regulation, unless the context otherwise requires, the following terms shall have the following meanings:

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a) Application/Affidavit for Vacancy Decontrol: (Form V1) filed by the landlord on a form approved by the Administrator

b) Forms: Forms approved by the Administrator.

c) In Escrow: Monies placed in the care of a third party until the application of a vacancy decontrol is accepted by the board.

d) Legal Occupant:

1. A tenant, or an owner occupant in possession, one or more co-tenants or joint tenants under a rental agreement, written or oral, express or implied, in effect prior to January 1, 1976.
2. A legal sub-tenant or assignee of a rental agreement which was in effect prior to January 1, 1976, and remained in effect after January 1, 1976.
3. Any tenant obligated for the full term of a rental agreement which went into effect prior to January 1, 1976 and remained in effect on or after January 1, 1976.

For the purposes of Section 1(n)(v) of the Ordinance and of this regulation, the mere fact of termination of the tenancy by notice or otherwise shall not end a legal occupancy of a spouse of a legal occupant or a child born of the legal occupant while in possession of the unit.

e) Landlord: The owner or his agent as defined in Section 1(p) of the Ordinance.

f) Ordinance; Chapter 34, of the Ordinances of the City of Boston, 1984.

g) Owner Occupant: A landlord who resides in a unit of a building which he owns as his principal and permanent residence.

h) Previously Exempted Housing Accommodations: Housing Accommodations which were exempt by the provisions of Section 1(n) subsections (i) through (vi) of the Ordinance, as amended, and which have lost such grounds for exemption and are now subject to rent and eviction control under the Ordinance.

i) Vacancy: A housing accommodation shall be considered vacant for the purposes of this regulation when both;

   a. the physical possession of all legal occupants of that housing accommodation and;

   b. the right to possession of all legal occupants of that housing accommodation have terminated.

   c. Where all legal occupants have vacated the premises as a result of an order of a court of competent jurisdiction or an execution of summary process, or by voluntary departure, whether during the term of a tenancy or after the expiration thereof, or by departure during the course of legal and proper proceedings to recover possession on or after January 1, 1976, the landlord shall be eligible to have the housing accommodation decontrolled.

SECTION 3. EXCEPTIONS Vacancies which will not Decontrol a Housing Accommodation:

No housing accommodation may become decontrolled for the purposes of this regulation if the legal occupant vacated the premises involuntarily.

A) Definition of Involuntary Vacancy: Involuntary Vacancy includes, without limitation, the following conduct by the owner directed towards the legal occupant:

1. harrassment, coercive or forcible conduct;
2. unreasonable interruption of heat, utilities or other essential housing services;
3. demanding rent in excess of the legal maximum rent;
4. locking the legal occupant out of the housing accommodation;
5. threatening the legal occupant;
6. failure of the owner during the tenancy of the legal occupant to correct code violations that materially impair health and safety or to perform ordinary and necessary repairs or maintenance;
7. fraud or misrepresentation by the owner directed toward the legal occupant including, without limitation: knowingly causing the legal occupant to believe that the legal occupant will remain under the protection of the Board if the legal occupant moves; or making false statements about the rights and obligations of the legal occupant under the Ordinance or this regulation.

8. eviction of the legal occupant or termination of his tenancy by the owner without following the proper lawful procedure. Proper lawful procedure shall include, without limitation, the presentation of the rights under the Ordinance to the legal occupant on an approved form (E-O) or a written notice containing the language from the paragraph "Important Information to Tenant Regarding Vacancy Decontrol" on the form (E-O).

9. vacating a housing accommodation by the legal occupant due to the owner's breach of the covenants of quiet enjoyment or the warranty of habability;

10. an eviction for the purposes of condominium or cooperative conversion without complying with the applicable provisions of the Ordinance and regulations;

11. any other just cause.

B DEFINITION OF INVOLUNTARY VACANCY: The vacating of a housing accommodation by the legal occupant due to a fire or other natural disaster.

SECTION 4. EFFECT OF INVOLUNTARY VACANCY

If a vacancy is not voluntary or pursuant to court order, the housing accommodation shall remain a controlled housing accommodation. If the former legal occupant regains possession and thereafter vacates voluntarily or pursuant to a court order or a bona fide successor tenant vacates voluntarily or pursuant to a court order, the housing accommodation shall become decontrolled from rent and eviction controls, after the owner applies for an Application for Vacancy Decontrol.

SECTION 5. APPLICATION/AFFIDAVIT FOR VACANCY DECONTROL

A) General Rule: Filing an Application: An owner seeking to decontrol a housing accommodation under this regulation, shall complete and file one Application for each housing accommodation that the owner is seeking to decontol. The Application must be on an approved form. Copies of the Application must be retained by the owner and shall be maintained as part of the owner's records until the expiration of the Ordinance.

1. The Application shall include the following information and shall be signed under the pains and penalties of perjury by the landlord:

   a) a statement by the owner that the vacancy was voluntary, or a statement by the owner that the vacancy was pursuant to court order (if pursuant to court order, the owner must attach a copy of the court order to the Application.)

   b) all other information required by said Application.

2. The owner may be required to supply certain designated information to the best of the owner's knowledge and belief.

SECTION 6. DECONTROL OF PREVIOUSLY EXEMPT HOUSING ACCOMMODATIONS

A) A previously exempted housing accommodation may be decontrolled by the existing landlord in the same manner as described in Section 5 of this regulation except that:

   1. The current landlord shall complete and sign that portion of the Application that deals with previously exempt property, and;

   2. That statement of the landlord which is signed under the pains and penalties of perjury as to the voluntary vacancy,

a) must be the signature of the landlord or owner occupant at the time the voluntary vacancy occurred; and

b) must be the personal knowledge of the landlord.

SECTION 7. GENERAL REQUIREMENTS

A) The housing accommodation shall be considered decontrolled for all purposes when the Board receives and dockets the required Application and required verification. The Board shall then decide whether or not the Application has been filed correctly.

B) An Application for Vacancy Decontrol shall be deemed to have been filed correctly upon the decision of the Board and issuance of a Certificate of Vacancy Decontrol.

C) No Application shall be entertained until or unless the building is properly registered in accordance with the Ordinance and applicable regulations.

SECTION 8. APPLICATION THAT IS ILLEGIBLE, INCOMPREHENSIBLE, INCOMPLETE, OR IMPROPERLY FILED, OR AMENDED

If a landlord's Application is illegible, incomprehensible, incomplete or otherwise improperly filed, the Board shall not accept the petition for filing without prejudice and shall notify the landlord of such non-acceptance and the reasons therefor.

Once filed, an Application may not be altered by amendment.

SECTION 9. DOCKETING OF APPLICATION

An owner's Application for Vacancy Decontrol shall be time-stamped and numbered as received and docketed. The Application shall be processed in the order received; however, an Application may be advanced for good cause and such good cause shall be stated in the record.

SECTION 10. NOTICE OF PROCESSING APPLICATION.

On receiving and docketing of an Application (other than an Application not accepted without prejudice under Section 7), notice shall be sent to the last legal occupant for which the Application has been applied informing the last legal occupant of the facts as stated by the Application and of the right of the last legal occupant to submit evidence or argument opposing the Application within 10 calendar days of the date of such notice.

SECTION 11. DETERMINATION OF FACTS AND HEARINGS

The Board shall on its own initiative make inquiries and investigations into the facts contained on the Application. The Board may require the owner to provide further facts or evidence to support the Application. The Board may order a hearing upon a finding of probable cause that a vacancy may not have been voluntary or pursuant to court order. Any party, with or without a hearing, may supply information and argument regarding the Application within 10 calendar days of the filing of the Application.

The burden of proof shall be upon the landlord to establish that the Application should be accepted and the housing accommodation be decontrolled. No opposition is necessary in order to deny an Application for Vacancy Decontrol.

SECTION 12. NOTICE OF HEARING

Notice of the time and place of a hearing scheduled pursuant to Section 11 shall be sent to the owner and any other interested parties as determined by the Board.

SECTION 13. FAILURE TO APPEAR AT SCHEDULED HEARING.

Upon failure of the landlord to appear at the scheduled hearing, or upon failure of all notified parties to appear, the Board may dismiss

the Application without prejudice. Where any notified party other than the owner fails to appear at a scheduled hearing, the Board may make a finding based on the information supplied by the landlord and any other information in the record.

SECTION 14. PROCEDURE FOR CHARGING RENT IN EXCESS OF THE LEGAL MAXIMUM RENT BEFORE THE ACCEPTANCE OF AN APPLICATION FOR VACANCY DECONTROL

A. 1) Upon the receiving and docketing of a Vacancy Decontrol Application on an approved form and prior to the acceptance of said Application by the Board, a landlord may:

a) commence to charge more than the legal maximum rent and place in escrow any amount in excess of the legal maximum rent

b) the amount in excess of the legal maximum rent shall remain in escrow until such time as the Board accepts an Application for Vacancy Decontrol as correctly filed.

2) The new occupant shall continue to pay the bargained-for-rent until notified by the Board of the decision that accepts or rejects the Application for Vacancy Decontrol.

3) For the purposes of this Section, the procedures as provided in Sections 5-13 inclusive, shall apply to the processing of the Application.

4) If the Board rejects an Application for Vacancy Decontrol, the owner shall be required to refund, within thirty (30) days of the vote of rescission, the amount held in escrow.

5) If the Board accepts an Application for Vacancy Decontrol, the owner may dissolve the escrow and retain the funds.

B. As long as the provisions of Section 14(A) are met, it shall not be considered a violation of Section 4 of the Ordinance to charge and hold in escrow any amount in excess of the legal maximum rent.

SECTION 15. RETENTION OF JURISDICTION

A. Decontrol, under Section 1(n)(v) of the Ordinance , is conditioned upon the vacating of the housing accommodation voluntarily or pursuant to a court order.

B. The acceptance of a Vacancy Decontrol Application shall not bar the Board from asserting jurisdiction and entering appropriate orders or from bringing civil or criminal action against the landlord where the decontrol was improperly obtained.

C. The Board shall maintain jurisdiction over any housing accommodation for which an Application for Vacancy Decontrol has been accepted for the purpose of maintaining or bringing any action or prosecution, or making and enforcing any settlement pursuant to any violation of the Ordinance occurring prior to the acceptance of an Application for Vacancy Decontrol.

SECTION 16. CRIMINAL PENALTIES

A. It shall be unlawful for any person to cause a vacancy by forcible or coercive conduct or by fraud or misrepresentation or by filing a false affidavit under this regulation.

B. The landlord is required to comply with all provisions of the Ordinance until the Board accepts an Application for Vacancy Decontrol for a housing accommodation, except as provided in Section 14.

C. Any violation of this regulation may subject the violator to the penalties as prescribed in Section 14(C) of the Ordinance.

SECTION 17. EFFECTIVE DATE

This regulation shall take effect on December 13, 1984, for all vacancies occurring on or after January 1, 1976.

SECTION 18. JUDICIAL CONSTRUCTION

The conditions of this regulation are severable, and if any provision shall be held unconstitutional, or otherwise invalid by any court of competent jurisdiction, the decision of such court shall not effect or impair any of the remaining provisions.